

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
FLORENCE DIVISION

Thomas Green,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Civil Action No. 4:09-2573-TLW-TER
	)	
Gwen T. Hyatt,	)	
	)	
Defendant.	)	
_____	)	

**ORDER**

The plaintiff, Thomas Green (“plaintiff”), proceeding *pro se*, filed this action pursuant to 42 U.S.C. § 1983. (Doc. #1). The case was referred to United States Magistrate Judge Thomas E. Rogers, III pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and Local Rule 73.02 (B)(2)(d), DSC.

This matter now comes before this Court for review of the Report and Recommendation (“the Report”) filed by United States Magistrate Judge to whom this case had previously been assigned. (Doc. #10). In the Report, the Magistrate Judge recommends that the District Court dismiss this action without prejudice and without issuance and service of process based on immunity. (Doc. #10). The plaintiff filed objections to the report. (Doc. #12). In conducting this review, the Court applies the following standard:

The magistrate judge makes only a recommendation to the Court, to which any party may file written objections...The Court is not bound by the recommendation of the magistrate judge but, instead, retains responsibility for the final determination. The Court is required to make a *de novo* determination of those portions of the report or specified findings or recommendation as to which an objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the Report and Recommendation to which no objections are addressed. While the level of scrutiny

entailed by the Court's review of the Report thus depends on whether or not objections have been filed, in either case, the Court is free, after review, to accept, reject, or modify any of the magistrate judge's findings or recommendations.

Wallace v. Housing Auth. of the City of Columbia, 791 F. Supp. 137, 138 (D.S.C. 1992)

(citations omitted).

In light of the standard set forth in Wallace, the Court has reviewed, de novo, the Report and the objections. The Court notes that the plaintiff has objected to the Magistrate Judge's conclusion based on the Fourth Circuit's decision in McCray v. Maryland, 456 F.2d 1 (4th Cir. 1972). The Court notes that McCray is no longer applicable in cases alleging negligent conduct by a Clerk of Court. See Pink v. Lester, 52 F.3d. 73, 77 (4th Cir. 1995), McFadden v. Clarendon County Sheriff Department, 2001 WL 34085610, \*8 (D.S.C. 2001), Thompke v. County of Berkeley, 2008 WL 4449949, \*4 (D.S.C. 2008), Wise v. United States, 2009 WL 2358362, \*3-4 (D.S.C. 2009). Thus, the Court finds the objections of the plaintiff to be without merit.

After careful review of the Report and objections thereto, the Court **ACCEPTS** the Report. (Doc. #10). For the reasons articulated by the Magistrate Judge, this action is hereby **DISMISSED** without prejudice and without issuance and service of process.

**IT IS SO ORDERED.**

s/Terry L. Wooten  
United States District Judge

February 16, 2010  
Florence, South Carolina